

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

07

CV
ECF CASE

3780

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BRITT ALEXIS RUSS,
Plaintiff,

07 CIV

-against-

NOTICE OF REMOVAL

GMRI, INC., 5 TIMES SQUARE NYC/5, a
subsidiary of Darden Restaurants, Inc., d/b/a
Red Lobster, and JOHN DOE, said name being
fictitious and intended to denominate the defendants'
employees more fully described herein,
Defendants.
-----X

Trial by Jury Demanded

MAY 14 2007

Defendant GMRI, Inc. d/b/a Red Lobster s/h/a GMRI, Inc., 5 Times Square NYC/5, a
subsidiary of Darden Restaurants, Inc. d/b/a Red Lobster by its attorneys ROBIN, HARRIS,
KING, FODERA & RICHMAN, in the above-entitled case, states:

1 Defendant desires to exercise its rights under the provisions of Title 28 U.S.C. §1441, *et seq.*, to remove this action from the Supreme Court of the State of New York, New York County, in which Court said cause is now pending under the caption Britt Alexis Russ, Plaintiff against GMRI, Inc., 5 Times Square NYC/5, a subsidiary of Darden Restaurants, Inc. d/b/a Red Lobster, Defendants," index number 118621/06.

2 This is a civil action in which the District Courts of the United States have been given jurisdiction in that there exists diversity of citizenship between plaintiff and defendant, the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and thus there is original jurisdiction in the District Courts of the United States as provided in 28 U.S.C. §1332.

3 Under the provisions of 28 U.S.C. §1441, *et seq.*, the right exists to remove this case from the Supreme Court of the State of New York, New York County to the United States District Court for the Southern District of New York, which embraces the place where this action is pending.

4 In the Complaint, plaintiff does not set forth the amount of money plaintiff seeks to recover in this action, except to state that it exceeds the jurisdiction limit of any lower Court, which in this instance, would be \$25,000. However in plaintiff's bill of particulars, received by defendant on May 4, 2007, plaintiff sets forth that plaintiff is seeking judgment in this action in the amount of \$2,000,000.

5 This action involves a controversy between citizens of different states. Plaintiff is now, and was at the commencement of this action, a citizen of the State of New Jersey residing at 125 Gates Avenue, Montclair, New Jersey 07042. The defendant, GMRI, Inc. d/b/a Red Lobster, is now and was at the commencement of this action a corporation organized and existing under the laws of the State of Florida, with its principal place of business in the State of Florida and was not and is not a citizen of the State of New York. The cause of action arose in the State of New York.

6 The date on or before which defendant was required by the Civil Rules of Procedure of the State of New York to answer or plead as to plaintiff's verified complaint has lapsed, but defendant has timely served an answer.

7 The date upon which the summons and verified complaint was filed was December 15, 2006; the date upon which the summons and verified complaint was served upon defendant was December 27, 2006. The date upon which a supplemental summons and amended verified complaint was filed was February 28, 2007. Defendant served its answer to plaintiff's amended verified complaint on March 27, 2007 and demanded that plaintiff set forth the amount of damages which plaintiff felt herself entitled. In her bill of particulars, received by defendant on May 4, 2007, plaintiff set forth that in this action she is seeking to recover \$2,000,000.

8 In accordance with the requirements of 28 U.S.C. §1446, this petition for removal is filed within 30 days after the receipt of the plaintiff's bill of particulars, which set forth for the first time, the amount in controversy.

9 Pursuant to the provisions of 28 U.S.C. §1446, defendant attaches herewith and incorporates herein by reference copies of the following documents in this action:

- a. Plaintiff's Summons and Verified Complaint. (Exhibit A).
- b. Defendant's Notice of Appearance and Demand for Ad Damnum (Exhibit B).
- c. Plaintiff's Supplemental Summons and Amended Verified Complaint. (Exhibit C).
- d. Defendant's Verified Answer to Plaintiff's Amended Verified Complaint and demand for a Bill of Particulars (Exhibit D).
- e. Plaintiff's Bill of Particulars (Exhibit E).

10 By reason of the above, defendant desires and is entitled to have this cause removed from the Supreme Court of the State of New York, New York County to the United States District Court for the Southern District of New York, such being the district where said suit is pending.

11 Written notice of the filing of this petition will be given to adverse parties as required by law.

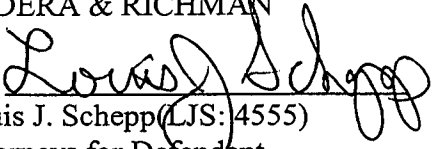
12 A true copy of this notice will be filed with the Clerk of the Supreme Court of the State of New York, New York County.

WHEREFORE, defendant GMRI, Inc. d/b/a Red Lobster prays that this action be removed to this Court and that this Court accept jurisdiction of this action and henceforth that this action be placed on the docket of this Court for further proceedings, the same as though this action had originally been instituted in this Court.

Dated: New York, New York
May 11, 2007

Yours, etc.,

ROBIN, HARRIS, KING,
FODERA & RICHMAN

By: 
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